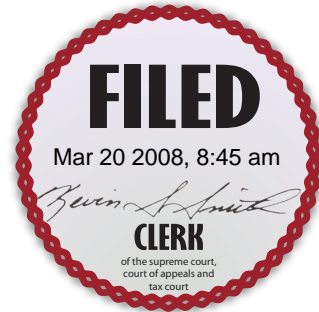


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEYS FOR APPELLANT:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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In the Matter of the Adoption of R.B.H.	)	
	)	
MARK L. HARPER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 53A04-0710-CV-571
	)	
DAVID EUGENE ELLIOTT, JR.,	)	
	)	
Appellee-Petitioner.	)	

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable David L. Welch, Judge  
Cause No. 53C07-0605-AD-00030

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**March 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Mark L. Harper appeals the trial court's denial of his motion to correct error filed in an adoption action brought by David Eugene Elliott, Jr. Harper raises one issue, which we restate as whether the trial court erred by granting Elliott's motion to correct error and by denying Harper's motion to correct error. We reverse and remand.

The relevant facts follow. On May 24, 2006, Elliott filed a petition to adopt his stepchild, R.B.H., and alleged that the consent of R.B.H.'s biological father, Harper, to the adoption was unnecessary because Harper had failed, for a period of at least one year, without justifiable cause, to significantly communicate with R.B.H. or to provide support for R.B.H.'s health, welfare, or care. Harper filed an objection to the adoption. A hearing was held on the petition, and Harper presented evidence, while Elliott requested judgment on the evidence. Elliott had not yet presented evidence, and the trial court took the motion for judgment on the evidence under advisement. On April 16, 2007, the trial court entered findings of fact and conclusions thereon, concluding that Harper's consent to adoption was required and denying Elliott's petition to adopt R.B.H.

On May 14, 2007, Elliott filed a motion to correct error in a related paternity action under Cause No. 53C07-9907-JP-365 rather than in the adoption action under Cause No. 53C07-0605-AD-030. On June 5, 2007, the trial court entered the following order in the adoption action:

Court directs [Elliott] to file Motion to Correct Errors in the above cause. Motion to Correct Errors filed in cause 53C07-9907-JP-365 is moot, due to Court denying the Petition for Adoption of [R.B.H.] in cause ending in 030. Court also directs counsel to file Motion to Correct Errors on or before July 18, 2007. Hearing is scheduled on July 18, 2007 at 1:00 p.m.

Appellant's Appendix at 5.

On July 18, 2007, Elliott filed a motion to correct error in the adoption action. At a hearing on the same date, the trial court granted Elliott's motion to correct error and set the matter for hearing on August 24, 2007. Harper objected that the motion to correct error was untimely and filed his own motion to correct error. Elliott also filed a motion to set aside judgment pursuant to Ind. Trial Rule 60(B)(8) and 60(B)(3) and later filed a motion for relief from judgment.<sup>1</sup> After a hearing on August 24, 2007, the trial court took the matters under advisement and noted that it would issue a written order. Harper's motion to correct error was deemed denied when the trial court failed to rule on it within thirty days after the hearing,<sup>2</sup> and on October 2, 2007, Harper filed a notice of appeal.

The issue is whether the trial court erred by granting Elliott's motion to correct error and by denying Harper's motion to correct error. "A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct errors." Carter-McMahon v. McMahon, 815 N.E.2d 170, 174 (Ind. Ct. App. 2004). "A trial court has abused its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences therefrom." Id.

We first note that Elliott has failed to file an appellee's brief. When the appellee fails to submit a brief, we need not undertake the appellee's burden of responding to arguments that are advanced for reversal by the appellant. Hamiter v. Torrence, 717

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<sup>1</sup> These documents are not in the Appellant's Appendix.

<sup>2</sup> The trial court also did not rule on Elliott's motion to set aside or motion for relief from judgment.

N.E.2d 1249, 1252 (Ind. Ct. App. 1999). Rather, we may reverse the trial court if the appellant makes a prima facie case of error. Id. “Prima facie” is defined as “at first sight, on first appearance, or on the face of it.” Id.

Ind. Trial Rule 59(C) provides that a “motion to correct error, if any, shall be filed not later than thirty (30) days after the entry of a final judgment or an appealable final order.” Ind. Trial Rule 6(B) provides that “the court may not extend the time for taking any action . . . to correct errors under Rule 59(C) [and other rules] . . . except to the extent and under the provisions stated in those rules.” However, “Trial Rule 59(C) makes no provision for extending the thirty-day time frame if the time has already passed.” Carter-McMahon, 815 N.E.2d at 177. “The trial court has no jurisdiction to accept amendments or supplements after the time period for filing a motion to correct error has elapsed.” C.A.M. ex rel. Robles v. Miner, 835 N.E.2d 602, 605 (Ind. Ct. App. 2005).

Here, the trial court denied Elliott’s petition to adopt R.B.H. on April 16, 2007. Elliott filed a motion to correct error within thirty days of the trial court’s order, but he filed it in the wrong action. On June 5, 2007, the trial court gave Elliott until July 18, 2007, to file a motion to correct error in the adoption action, but the trial court did not have authority to extend the thirty-day deadline for filing the motion to correct error. The trial court erred by granting Elliott’s untimely motion to correct error and by denying Harper’s motion to correct error on this issue. Consequently, we reverse the trial court’s grant of Elliott’s motion to correct error, and we reverse the trial court’s denial of Harper’s motion to correct error. See, e.g., Waas v. Illinois Farmers Ins. Co., 722 N.E.2d

861, 863 (Ind. Ct. App. 2000) (holding that the trial court did not have authority to grant an extension of time to file a motion to correct error and the motion to correct error, which was filed over fifty days after the entry of judgment, was untimely), reh'g denied.

For the foregoing reasons, we reverse the trial court's grant of Elliott's motion to correct error, and we reverse the trial court's denial of Harper's motion to correct error.

Reversed.

BARNES, J. and VAIDIK, J. concur